

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.30.1302 and 24.30.1311,) ON PROPOSED AMENDMENT
relating to occupational health and safety)
in mines)

TO: All Concerned Persons

1. On July 28, 2006, at 10:00 a.m., a public hearing will be held in the first floor conference room, Room 104 of the Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on July 24, 2006, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Department of Labor and Industry, Attn: Jolene Loomis, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6401; fax (406) 444-9396; TDD (406) 444-9696; or e-mail jloomis@mt.gov.

3. The rules proposed to be amended provide as follows, stricken material interlined, new material underlined:

24.30.1302 COAL MINING CODE (1) remains the same.

(2) The Department of Labor and Industry adopts under 50-73-103, MCA, coal mine safety standards to protect employees who work in coal mines in this state. The following standards are adopted by reference to certain safety and health rules and standards that have been adopted by the federal government and are found in the Code of Federal Regulations (CFR), Title 30, revised as of July 1, ~~1997~~ 2006:

(a) ~~30 CFR 41.1 through 30 CFR 41.30~~ 30 CFR part 41, pertaining to notification by the mine of its legal identity;

(b) ~~30 CFR 70.1 through 30 CFR 70.210~~ 30 CFR part 47, pertaining to hazard communication;

(c) ~~30 CFR 70.220~~ 30 CFR part 48, pertaining to training and retraining of miners;

(d) ~~30 CFR 70.300 through 70.511~~ 30 CFR part 62, pertaining to occupational noise exposure;

(e) ~~30 CFR 71.1 through 71.300~~ 30 CFR part 70, pertaining to mandatory health standards in underground coal mines;

(f) ~~30 CFR 70.1900~~ 30 CFR part 71, pertaining to mandatory health standards in surface coal mines and surface work areas of underground coal mines;

(g) ~~30 CFR 71.400 through 30 CFR 74.3~~ 30 CFR part 72, pertaining to health standards for coal mines;

(h) ~~30 CFR 75.1 through 30 CFR 75.154~~ 30 CFR part 74, pertaining to coal mine dust personal sampler units;

(i) ~~30 CFR 75.159 through 30 CFR 1200-1~~ 30 CFR part 75, pertaining to mandatory safety standards in underground coal mines, except:

(i) 30 CFR 75.155, which is not applicable because Montana licensing statutes for crane and hoist operators apply; and

(ii) 30 CFR 75.1200-2, which is not applicable because 50-73-201, MCA, provides that mine maps must be made to a scale of not less than 200 feet to 1 inch; and

(j) ~~30 CFR 75.1201 through 30 CFR 77.104;~~ and 30 CFR part 77, pertaining to mandatory safety standards in surface coal mines and surface work areas of underground coal mines, except:

(k) ~~30 CFR 77.106 through 77.1916;~~ but

(i) as to the requirements of 30 CFR ~~77.807.1~~, the minimum height for high voltage power lines is 20 feet above the ground; and

(ii) through (4) remain the same.

AUTH: 50-71-301 50-73-103, MCA

IMP: 50-73-103, 50-73-201, 50-73-302, MCA

REASON: There is reasonable necessity to amend ARM 24.30.1302 in order to incorporate by reference the current federal rules promulgated by the Mine Safety and Health Administration (MSHA). These rules are periodically updated by MSHA. The July 1, 2006, version of the Code of Federal Regulations is proposed for incorporation by reference because it is the most current version. Updating the reference to the most current set of federal regulations is appropriate and necessary in order to ensure that mine operators and workers are subject to a consistent set of safety and health standards by both state and federal authorities.

In addition, there is reasonable necessity to reorganize the format of the portions of the rules incorporated by reference to enhance clarity and ease of use while the rule is otherwise being amended. There is also reasonable necessity to amend (2)(j)(i) to correct a citation to the CFR that omitted the part number while the rule is otherwise being amended. There is reasonable necessity to amend the AUTH citation to add the specific statute that grants the department rulemaking authority with respect to coal mines. There is reasonable necessity to amend the IMP citation to include a reference to 50-73-201, MCA, which is specifically referenced in the proposed amendments, as well as the hoisting engineer licensing provisions provided by 50-73-302, MCA.

The department notes that the existing exceptions contained in (2)(i) are based upon Montana's licensing laws for crane and hoist operators, as described in Title 50, chapter 76, MCA, and referenced by 50-73-302, MCA, and the map scale requirements found at 50-73-201, MCA. The existing exceptions contained in (2)(j) are based upon Montana electrical standards as found in ARM 24.301.401, and the

prohibition about wearing rings or having unrestrained long hair is based on the department's experience and accepted occupational safety practices.

24.30.1311 INCORPORATION BY REFERENCE OF RULES REGARDING
EMPLOYEE HEALTH AND SAFETY IN MINES OTHER THAN COAL MINES

(1) The Department of Labor and Industry adopts and incorporates by reference the United States Department of Labor, Mine Safety and Health Administration's regulations, Title 30, Code of Federal Regulations, parts 46, 47, 48, 49, 50, 56, 57, 58, and 62, revised as of July 1, ~~2004~~ 2006.

(2) and (3) remain the same.

AUTH: 50-71-301, 50-71-311, MCA

IMP: 50-71-301, 50-71-311, 50-71-312, 50-72-102, MCA

REASON: There is reasonable necessity to amend ARM 24.30.1311 in order to incorporate by reference the current federal rules promulgated by the Mine Safety and Health Administration (MSHA). These rules are periodically updated by MSHA. The July 1, 2006, version of the Code of Federal Regulations is proposed for incorporation by reference because it is the most current version. Updating the reference to the most current set of federal regulations is appropriate and necessary in order to ensure that mine operators and workers are subject to a consistent set of safety and health standards by both state and federal authorities.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Chris Catlett, Bureau Chief, Safety Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728; by facsimile to (406) 444-9396; or by e-mail to ccatlett@mt.gov, and must be received no later than 5:00 p.m., August 4, 2006.

5. An electronic copy of this Notice of Public Hearing is available through the department's site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in accessing the website or sending an e-mail do not excuse late submission of comments.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person

wishes to receive notices regarding all Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

8. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ DORE SCHWINDEN
Dore Schwinden, Deputy Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 26, 2006